S.B.CIVIL MISC. APPEAL NO.847/2006
(The Chief Manager, RSRTC & anr. Vs. Laduram & anr.)

DATED : 06.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Anil Bachhawat for the appellants

Having heard learned counsel for the appellants and having perused the memo of appeal and the impugned award dated 25.03.2006, this Court is satisfied that this appeal by the owners of vehicle of Rajasthan State Road Transport Corporation, seeking to question the award made in the sum of Rs.96,086/- in favour of the claimant for the loss suffered by him on account of injuries sustained in the accident, remains absolutely bereft of substance and deserves to be dismissed without being admitted.

On 15.01.2001 at about 3.45 p.m. when the victim Laduram was sitting on a stationary tractor bearing registration No.RJ 07 R-3430 at Pugal Bus Stand, the non-applicant No.1 Vikram Singh brought driving a bus belonging to the appellants bearing registration No.RJ 07 P-0970 and hit one Pathan Khan (who is said to have expired) and then the bus hit the tractor trolley and dragged it along, causing injuries to the claimant Laduram and 3-4 other persons. The claimant Laduram claimed compensation pointing out extensive injuries

suffered by him for which he was required to be hospitalised thrice over and could not carry on his agriculture work for eight months and has suffered permanent discomfort because of the fractures of bones and was unable to walk properly with his left leg. On behalf of the non-applicants, defence taken was that when the bus reached Pugal and the non-applicant No.1 attempted to apply the breaks, he found that the break-pedal was not functional and then he attempted to stop the vehicle by placing it in gear but on one side of the road, there was a truck and several people were sitting and on the other side was standing a tractor with trolley; and the bus despite all efforts at halting, hit against the tractor that capsized on the other side and then the bus came to a halt having been put in gear. It was submitted that the vehicle went out of control of the driver because of sudden break failure; that the incident occurred as an inevitable accident; and further that the tractor trolley was standing at no-parking place and, therefore, the applicant himself was responsible for the injuries.

The learned Tribunal noticed the facts of the case and found that the bus dragged the tractor-trolley for nearly 40 feet; and though the place of occurrence was a crowded bus stand, the driver did not slow down the speed of the bus. The Tribunal was also of the opinion that if it were a case of sudden break failure, the fault lay with the non-applicants only.

Taking up quantification of compensation, the Tribunal noticed that the injured claimant had suffered five injuries including fracture of tibia and fibula bones on his left leg and was required to be hospitalised four times for the treatment of such injuries. From the bills of medical expenditure, the Tribunal has found that a sum of Rs.20,186/- was spent by the claimant on treatment; and has found the claimant further entitled for a sum of Rs..20,000/- towards dietary expenditure during treatment. Another Rs.20,000/- have been allowed towards pains and sufferings for the injuries and resultant discomfort at walking. The claimant being 35 years of age and being engaged in agriculture, his monthly income has been taken at Rs.3000/- and the Tribunal has awarded him compensation of Rs. 36,000/- towards loss of income for a year looking to the fact that for minimum ten months, he was undergoing treatment and could not attend on his work. Summing up the amount allowed under various heads the Tribunal has awarded Rs.96,086/- as compensation to the injured claimant, although this amount seems to be falling short by Rs.100/- as the sum total of the bills has been stated at Rs.20,186/- in para 14 of the award but it has been taken at Rs.20,086/- in the final calculation. Be that as it may, the Tribunal has awarded interest at the rate of 7.5% per annum to the claimant from the date of filing of the claim application.

The very case set up by the non-applicants in relation to the facts surrounding the accident makes it apparent that the accident is clearly attributable to the appellants and their driver and none else. If the submissions of the appellants be accepted that it was a case of sudden mechanical failure, it is apparent that such mechanical failure is attributable to the bus owner and driver and none else.

This Court in S.B.Civil Misc. Appeal No.74/1996: RSRTC Vs. Smt.Bhajan Kaur & others, decided on 17.10.2005 rejected a similar defence put by Road Transport Corporation on its bus capsizing during journey for attributing the accident to the malfunctioning of the vehicle in order to avoid its liability. This Court relying on S.Kaushnuma Begum's case: AIR 2001 SC 485 has held,-

> "Every vehicle owner, for the very reason of his owning the vehicle and using it on the roads owes a direct duty to keep the vehicle in good repair and to maintain it properly so as to avoid against any mishap by or because of use of the vehicle. When plying a public service vehicle, this duty becomes more onerous. The defects occurring or developing during the journey of a vehicle cannot happen except for some loopholes in proper maintenance. The Corporation is not justified in representing that even when the accident is caused because of malfunctioning of its vehicle, the fault be not attributed to it. Hon'ble Supreme Court applying the principles of strict liability as developed from the rule stated in Rylands v Fletcher, has held in Kaushnuma Begum's case : AIR 2001 SC 485, that,-

> "11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action."

> Once the strict liability rule is applied, the other species of liability i.e. negligence, ceases to be the prime basis of cause of action and, instead, a person is responsible even for accidental harm even though he is not guilty of either wrongful intent or negligence. The rule of strict liability hits the appellant fair and square when the accident has happened, admittedly for mechanical defect and malfunctioning of its vehicle."

The injured has been hit only because of the malfunctioning of the vehicle of the appellants while being plied on the road and the fact as to whether the tractor was parked at a no-parking place has no relevance so far this claim for compensation by the injured is concerned.

It has been suggested in the memo of appeal in the present case that the accident has to be attributed to vis major. The submission is not correct. Malfunctioning of a vehicle cannot be attributed to vis major as explained by this Court in Ali Khan Vs. Vijay Singh and others : S.B.Civil Misc. Appeal No.270/1996 decided on 29.09.2005 thus,-

> "*Vis major* or the act of God, as presumed by the learned Judge of the Tribunal to be the cause of accident has no application to the facts of the present case. An act of God is an event which results directly from the forces of nature without human intervention. It necessarily means an operation of natural forces so unexpected that no human foresight could have visualised nor any skill could possibly have prevented the happening. A tyre or a wheel flying off running vehicle could hardly be taken to be an act of God, i.e. a circumstance which no human foresight can provide against and of which human prudence is not bound to recognise the possibility."

So far quantification of compensation is concerned, the award remains rather on the lower side. The injured in 35 years of age had suffered substantial injuries and had undergone treatment regularly for ten months and has even thereafter been required to be hospitalised in the year 2005. When the medical expenditure on the basis of the bills has been found running beyond Rs.20,000/-, in the circumstances surrounding thereto, the estimation for pains and suffering and permanent discomfort at Rs.20,000/- and dietary expenses at Rs.20,000/- cannot be said to be excessive and is rather on the lower side. The Tribunal has allowed a sum of Rs.36,000/- towards loss of income for a year fixing monthly income of the injured at Rs.3000/-. This estimation is also on the lower side. The rate of interest has also been allowed only at 7.5% per annum.

An overall comprehension of the award makes it clear that the same cannot be said to be highly excessive so to warrant any interference in appeal.

In this view of the matter, there appears no reasonable ground to admit this appeal and the same is, therefore, dismissed summarily.

(DINESH MAHESHWARI),J.

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